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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,801	08/07/2002	Fernando Alberto Grazziotin	4358-4000	6217
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MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
			EXAMINER GREEN, BRIAN	
			ART UNIT 3611	PAPER NUMBER

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,801

Applicant(s)

GRAZZIOTIN ET AL.

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on Aug. 16, 2004 is acknowledged. In view of the applicant's arguments the examiner has combined Group I. and Group II. Therefore the elected figures are figs. 1-4 (Groups I. and II.). The election requirement between Group I. (includes I. and II.) and Group III. is still considered to be proper. The traversal is on the ground(s) that there is no undue burden on the examiner to search the embodiments of the invention disclosed in the application. This is not found persuasive because the search for Group I (includes I. and II.) and Group III. are different and would present a burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claims 2,3,5, and 9 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **with** traverse in the response filed on 8/16/2004.

Priority

Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Brazil on Aug. 19, 1999. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

Drawings

The drawings are objected to because in figure 3 the separated elements should be embraced by a bracket. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the astrological symbols defined in claim 6, the numbers 1-8-15-22-29 or symbols defined in claims 7 and 11, musical notes and tones defined in claim 8, and the days of the month defined in claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because in line 1 the word “invention” is used which is improper. On the last line, “personalized” is misspelled. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: the headings (BACKGROUND OF THE INVENTION, SUMMARY OF THE INVENTION, BRIEF DESCRIPTION OF THE DRAWINGS, DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS) are missing for the appropriate sections of the specification.

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Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no antecedent basis in the specification for the language appearing in claims 6 and 8, i.e. in claim 6 (astrological symbols) and in claim 8 (seven musical notes and tones of the seven musical notes).

Claim Objections

Claims 1,4,6-8,10, and 11 are objected to because of the following informalities: In claim 1, line 5, “them” should apparently be “the areas” to make it clear what elements are being referred to. In claim 1, line 6, “each” should apparently be “each of the areas” to make it clear what elements the applicant is referring to. In claim 1, line 8, “month(s)” should apparently be “months”. Subject matter placed within parentheses in a claim are generally not given any patentable weight. In claim 1, line 8, “the same day of the week” should be “a same day of the week” since there is no antecedent basis for “the same day of the week”. In claim 1, line 9, “the sequential order” should apparently be “a sequential order” since there is no antecedent basis for “the sequential order”. In claim 6, line 5, “the representative area” should apparently be “a representative area” since there is no antecedent basis for “the representative area”. In claim 10, line 6, “year(s)” should apparently be “year”, subject matter placed within parentheses is generally not given any patentable weight in claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1,4,6-8,10, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, there is no antecedent basis for “the calendars of dates”. In claim 4, line 3, it is not clear whether the “seven associated areas” is the same as the “seven areas” defined in claim 1. In claim 4, line 4, it is not clear whether the “calendar” is the same as the calendar defined in claim 1 and earlier in claim 4. In claim 4, lines 5-6, it is not clear whether the “seven representative areas” is the same as the “seven areas” defined in claim 1 or the “seven associated areas” defined earlier in claim 4. In claim 4, lines 6-7, it is not clear whether the “symbols, colors, characters, objects or other representative elements” are the same as the ones defined in claim 1. In claim 4, lines 8-9, “with preference to the numbers first, eighth, fifteenth, twenty-two and twenty-nine” are indefinite since the metes and bounds of the claim can not be determined, i.e. “with preference” makes it unclear as to whether the applicant is positively claiming the first, eighth, fifteenth, twenty-two and twenty-nine. In claim 4, line 9, it is unclear whether “the representative elements” refers to the representative elements defined in claim 1 or the ones defined earlier in claim 4. In claim 4, line 5, there is no antecedent basis for “the shape of the human hand” and it is not clear whether the applicant is trying to relate the shape of the human hand to the “aspects of a human hand” defined on lines 2-3. In claim 6, line 3, it is not clear whether the “seven areas” is the same as the “seven areas” defined in claim 1. In claim 6, line 5, there is no antecedent basis for “the representative area”. In claim 7, line 2, there is no antecedent basis for “the numbers 1-8-15-22-29 or symbols”. In claim

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7, lines 4-5, and claim 11, line 3, it is not clear what constitutes a “traditional calendar”. In claim 7, line 5, and claim 11, line 3, it is not clear what elements are included by the word “they”. In claim 7, line 5, and claim 11, line 3, “calendar” is confusing since it is not clear whether the applicant is referring to the calendar referred to in claim 1 or earlier in claim 7 or to an additional calendar. In claim 8, line 2, there is no antecedent basis for “the seven musical notes”. In claim 10, line 10, “a calendar” is confusing since it is not clear whether the applicant is referring to the calendar defined earlier in claim 10. In claim 10, line 10, “each element” is confusing since it is not clear what element the applicant is referring to. In claim 11, lines 1-2, there is no antecedent basis for “the numbers 1-8-15-22-29 or symbols”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by De Loof (U.S. Patent No. 1,217,422).

De Loof shows in figure 1 a visual sensitive calendar with seven areas (Sun-Sat) representing days of the week and elements (Jan. – Dec.) representing months of the year. The days of the week for each month can be determined from the calendar taught by De Loof, see page 1, column 1, lines 26-46. In regard to claim 10, the first day of any given month is determined by counting back 6 days from the day of the week that the month is listed under. The symbol “7” is used in determining what day of the week a particular

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day of a month falls on. For example, De Loof shows the symbol "7" under Wednesday and the month of June is also under Wednesday. This means that the dates 7-14-21-28 in June fall on a Wednesday and 1-8-15-22-29 in June fall on a Thursday. In regard to claim 10, De Loof discloses that the calendar can be placed on a pencil, penholder, ink-bottle cap, or dater. In regard to claim 12, as broadly defined, the columns formed by "Sun, May", "Mon, Feb, Aug", "Tue, Mar, Nov", and "Wed, Jun" are considered to simulate "finger segments of a hand".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Loof (U.S. Patent No. 1,217,422).

In regard to claims 6 and 8, De Loof does not disclose making the representative elements in the form of astrological symbols or the days of the week in the form of musical notes. De Loof uses words to indicate the months of the year (Jan, Feb, etc.) and words to indicate the days of the week (Sun, Mon. etc.). It would have been obvious to one in the art to modify De Loof by making the representative elements in the form of astrological symbols and the days of the week in the form of musical notes since it is considered within one skilled in the art to use any type of indicia to indicate this information as desired, i.e. the specific form of the indicia is not considered to be a

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patentable feature. In regard to claims 7 and 11, De Loof does not use the use of numbers 1-8-15-22-29 or symbols that represent them on the calendar. De Loof discloses the use of the numbers 7-14-21-28, see page 1, column 1, lines 40-48. De Loof shows in figure 1 the number "7" on the calendar. For example, the 7th, 14th, 21st, and 28th of May fall on Sunday. Therefore, the symbol "7" also indicates that the 14th, 21st, and 28th also fall on the same day as the seventh of a given month. It would have been an obvious matter of design choice to one in the art to modify De Loof by using 1-8-15-22-29 or symbols that represent them on the calendar since the applicant fails to define any advantage to using these numbers and the numbers 7,14,21,28 defined by De Loof would work equally as well.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Loof (U.S. Patent No. 1,217,422) in view of Knight (U.S. Design Patent No. 38,938).

De Loof discloses the applicant's basic inventive concept except for making the calendar in the shape of a human hand. Knight shows in the figure the idea of making a calendar in the shape of a particular object to create a more aesthetically pleasing calendar. In view of the teachings of Knight it would have been obvious to one in the art to modify De Loof by making the calendar into a particular shape since this would create a more amusing and aesthetically pleasing display. It is considered within one skilled in the art to make the calendar into any particular shape (human hand) as desired.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Hoyt, O'Shaughnessy, Cummings, and Brown teach the use of calendars that include months of the year listed under days of the week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
Nov. 15, 2004